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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0004; Notice No. 173]

RIN: 1513–AC37

Proposed Expansion of the Monticello Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to expand the approximately 1,320-square mile “Monticello” viticultural area in Albemarle, Green, Nelson, and Orange Counties in Virginia, by approximately 166 square miles. The proposal would extend the viticultural area into Fluvanna County, Virginia. The established Monticello viticultural area and the proposed expansion area are not located within any established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed amendment to its regulations.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- Internet: <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB–2018–0004 at “Regulations.gov,” the Federal e-rulemaking portal);
- U.S. Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- Hand delivery/courier in lieu of mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels

provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013, (superseding Treasury Order 120-01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps

consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing the establishment of an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same procedures to request changes involving existing AVAs. Section 9.12(c) of the TTB regulations (27 CFR 9.12(c)) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the region within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area affecting viticulture, including climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and

- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition to Expand the Monticello AVA

TTB received a petition from George Cushnie, co-owner of Thistle Gate Vineyard, submitted on behalf of himself and a second vineyard owner, proposing to expand the established “Monticello” AVA. The Monticello AVA (27 CFR 9.48) was established by T.D. ATF–164, which published in the **Federal Register** on January 23, 1984 (49 FR 2757). The Monticello AVA covers approximately 1,320 square miles in Albemarle, Green, Nelson, and Orange Counties in Virginia. The Monticello AVA and the proposed expansion area are not located within any other AVA.

The proposed expansion area is adjacent to the southeastern portion of the established AVA and encompasses approximately 166 square miles of Fluvanna County between the James River and the Rivanna River. There are 2 vineyards covering a total of approximately 15 acres within the proposed expansion area. The petition included a letter from the president of the Jeffersonian Wine Grape Growers Society, an organization of over 30 wineries within the Monticello AVA, supporting the proposed expansion. Unless otherwise noted, all information and data pertaining to the proposed expansion area contained in this document come from the petition and its supporting exhibits.

Name Evidence

The expansion petition provides evidence that the proposed expansion area is historically associated with “Monticello,” the home of Thomas Jefferson,

as is the land currently within the Monticello AVA boundaries. For example, the Rivanna River, which forms the northern boundary of the proposed expansion area, was the primary means of transporting agricultural products from Jefferson's lands in the region to the James River, where the goods were then transported to other areas of Virginia. The Rivanna River is frequently referred to as "Mr. Jefferson's river," due to Thomas' Jefferson's efforts to make the river navigable by building dams, locks, and canals.¹ The river was so important to Jefferson and the functioning of Monticello and the surrounding agricultural lands, including agricultural lands in the proposed expansion area, that he listed his improvements to the river as a greater personal achievement than writing the Declaration of Independence.² Additionally, Jefferson played an active role in the establishment of Fluvanna County, where the proposed expansion area is located, and he drew the map for the proposed new county. The petition states that these pieces of historical evidence demonstrate that the region of the proposed expansion area held special significance for Jefferson and was important to the workings of his plantation at Monticello. As explained in the final rule that first established the Monticello AVA, the name "Monticello" is associated with the region in large part due to the historic connection with Thomas Jefferson, which as discussed above, also applies to the proposed expansion area.

The petition also provided evidence that the name "Monticello" is currently associated with the proposed expansion area. A lake in the proposed expansion area is called Lake Monticello. The "Monticelloman Olympic Triathlon" and

¹ McGehee, Minnie Lee, and Trout, William E. Mr. Jefferson's River, the Rivanna. Fluvanna County Historical Society: Palmyra, VA, 2001.

² Ibid.

“Monticelloman Half Triathlon” are annual athletic events held within the proposed expansion area. The Monticello Area Community Action Agency and Head Start–Monticello Area are two community assistance organizations that serve the residents of the proposed expansion area. Businesses within the proposed expansion area that use the name “Monticello” include Monticello Mulch, Monticello Mattress & More, Monticello Country Realtors, and Century 21 Monticello Properties.

Boundary Evidence

The established Monticello AVA is a roughly oval shaped region with a northeast-southwest alignment. The James River and the shared Albemarle–Fluvanna County line form the southeastern and eastern boundaries, respectively. The proposed expansion area is adjacent to the eastern boundary of the established AVA and is located entirely within Fluvanna County. No portion of Fluvanna County is currently within the Monticello AVA.

The proposed expansion area is roughly shaped like a triangle, with its apex pointing east, its base adjacent to the eastern edge of the established AVA, and the Rivanna and James Rivers forming the two sides. The apex of the proposed expansion area is at the confluence of the two rivers, near the town of Columbia. The proposed expansion area’s boundary begins at the intersection of the Rivanna River and the Albemarle–Fluvanna County line, along the eastern edge of the established AVA. Instead of continuing to follow the Albemarle–Fluvanna County line south, as the current AVA boundary does, the proposed expansion area continues southeasterly along the Rivanna River to its

confluence with the James River. The proposed boundary then follows the James River southwesterly and then northwesterly to the Albemarle–Fluvanna County line, where the proposed expansion area boundary rejoins the current AVA boundary.

Distinguishing Features

The petition states that the climate and soils of the proposed expansion area are similar to those of the established Monticello AVA. TTB notes that T.D. ATF–164, which established the Monticello AVA, does not provide a detailed discussion of the distinguishing features of the AVA. However, the original petition to establish the AVA contains more information. A copy of the original Monticello AVA petition was included as part of the proposed expansion petition package and is included in Docket No. TTB–2018–0004.

Climate

The original Monticello AVA petition stated that the Blue Ridge Mountains, to the west of the AVA, shelter the AVA from cold air flowing from the northwest. However, there are two major gaps in the mountains: one near Front Royal, Virginia, to the north of the Monticello AVA; and another near Roanoke, Virginia, to the south of the AVA. According to the original Monticello AVA petition, these two gaps divide cold air masses into two “rivers of cold air” that bypass the AVA and rejoin farther to the east, in the lower elevations and plains of the Piedmont region. Because the cool air bypasses the Monticello AVA, the petition stated that temperatures within the AVA are typically warmer than temperatures to the

west of the AVA in the Blue Ridge Mountains and to the east of the AVA in the Piedmont region.

A map in the original Monticello AVA petition shows that the average growing season length of the AVA ranges from 220 to 250 days, whereas the region east of the AVA averages between 150 and 175 days. The petition also included a 1979 plant hardiness zone map prepared by the Office of the Virginia State Climatologist that shows the AVA in zone 7, meaning that minimum winter temperature is typically between 5 and 10 degrees Fahrenheit (F). By contrast, the same map classifies the areas to the east and west of the AVA as zone 6, which ranges from -5 degrees to 5 degrees F.

The petition for the proposed expansion area included a current USDA plant hardiness zone map. Although the climate zones for the Monticello AVA, the proposed expansion area, and the surrounding regions have changed according to the new map, the established AVA and the proposed expansion area are still in a warmer zone than the region to the west. The new map places the Monticello AVA into zone 7a, where minimum winter temperatures ranges from 0 to 5 degrees F. The confluence of the Rivanna River and the James River, which is the location of the proposed expansion area, is shown on this map and is also in zone 7a, as is the entire region east of both the AVA and the proposed expansion area, as far east as Richmond. The region west of both the AVA and the proposed expansion area, within the Blue Ridge Mountains, is a cooler zone 6b, with minimum winter temperatures between -5 and 0 degrees F.

Although the plant hardiness zone map indicates that the zone for the Monticello AVA and the proposed expansion area extends eastward to Richmond, the petitioner provided other climate evidence to distinguish the proposed expansion area from the region to the east. For instance, the proposed expansion petition provides a higher-resolution of the map that was used in the original AVA petition to show the length of the growing season within the AVA and the surrounding areas. The higher resolution map shows that the far northeastern portion of the Monticello AVA, in Orange County, extends eastward beyond the 200-day contour, though not far enough east to reach the 175-day contour. The expansion petition estimates that, based on the higher resolution map, the Orange County portion of the AVA has a growing season between 190 and 200 days. When the proposed expansion area is drawn onto this high-resolution map, it also appears to have a growing season of between 190 and 200 days. Similar to the existing AVA, the proposed expansion area does not extend into the 175-day contour, which is slightly farther to the east. Therefore, according to the proposed expansion petition, the higher-resolution map shows that the proposed expansion area has a growing season length similar to that of the Orange County portion of the Monticello AVA. The higher-resolution map also shows that the region to the east of both the Monticello AVA and the proposed expansion area has a shorter growing season.

Finally, the proposed expansion petition provided a higher-resolution version of the map used in the original Monticello petition to show the path that the “rivers of cold air” take around the AVA. The higher-resolution map shows

that the Orange County portion of the Monticello AVA extends between the 15 degree contour and the 13 degree contour, meaning that the minimum January temperature for this portion of the Monticello AVA is between 13 and 15 degrees F. The “rivers of cold air” converge farther east, between the 13 degree contour and the 11 degree contour. When drawn on this map, the proposed expansion area also extends beyond the 15 degree contour, but not into the 13 degree contour. The proposed expansion petition states that this higher-resolution map demonstrates that January temperatures within the proposed expansion area are more similar to those of the Orange County portion of the Monticello AVA than those of the cooler region farther to the east of the established AVA where the “rivers of cold air” converge.

The proposed expansion petition states that climate affects viticulture within the Monticello AVA and the proposed expansion area. According to the petition, the recommended minimum growing season length for most varieties of wine grapes in Virginia is 180 days, although a few very-early ripening varieties such as some Muscat varieties and Viognier can ripen in as few as 155 days.³ The 190- to 200-day growing season length in the proposed expansion area is long enough to grow many varieties of wine grapes, including Cabernet Franc, Malbec, Chardonnay, Merlot, and Pinot Gris. The proposed expansion petition states that these varieties are also all grown within the established Monticello AVA.

Soils

³ Wolf, Tony K., and Boyer, John D. Vineyard Site Selection. Virginia Tech Publication #463-020. 2003, page 2.

The original petition to establish the Monticello AVA described the soils of the AVA as a mixture of clay and loam. The soils are generally deep and well-drained. The predominant soil series found within the AVA are Buchanan, Davidson, Dyke, Nason, and Rapidan. Neither the original AVA petition nor T.D. ATF–164 describes the soils surrounding the Monticello AVA.

The proposed expansion petition states that modern Internet-based soil mapping tools provide a more detailed and accurate description of the soil series of the proposed AVA than the paper soil maps used in the original Monticello AVA petition. The expansion petition included a table comparing the major soil series found in the proposed expansion area, located in Fluvanna County, and the counties currently within the Monticello AVA. The data was compiled using the USDA's Websoils tool.⁴ The data shows that the proposed expansion area shares four of the five major soil series found within the Monticello AVA.

Soils of the Monticello AVA and the Proposed Expansion Area

County	Soil Series				
	Lew	Louisburg	Manteo	Nason	Tatum
Fluvanna (proposed expansion area)		X	X	X	X
Albemarle	X	X	X	X	X
Green	X				
Nelson	X				
Orange		X	X	X	X

According to the proposed expansion petition, the soils found within the proposed expansion area are well-suited for viticulture, particularly soils of the

⁴ <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

Nason and Manteo series. These two soils are described as well-drained silty loams. Well-drained soils prevent boggy conditions, which restrict root growth and respiration. The soils also have low to moderate levels of organic content. The proposed expansion petition states that soils with high levels of organic content are not generally desirable for viticulture because the abundance of nutrients promotes overly vigorous shoot and leaf growth at the expense of fruit production and quality.

TTB Determination

TTB concludes that the petition to expand the boundaries of the established Monticello AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for expansion area in the proposed regulatory text published at the end of this proposed rule.

Maps

To document the existing and proposed boundaries of the Monticello AVA, the petitioner provided a copy of the required 1971 1:250,000-scale Roanoke, Virginia USGS quadrangle map.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be

derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label.

Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The approval of the proposed expansion of the Monticello AVA would not affect any other existing viticultural area. The expansion of the Monticello AVA would allow vintners to use “Monticello” as an appellation of origin for wines made primarily from grapes grown within the proposed expansion area if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should expand the Monticello AVA as proposed. TTB is specifically interested in receiving comments on the similarity of the proposed expansion area to the established Monticello AVA, as well as the differences between the proposed expansion area and the areas outside the Monticello AVA. TTB is particularly interested in any viticulture that occurs in the eastern watershed of Fluvanna

County and how it relates to the boundary evidence discussed above and presented in the expansion petition. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this notice of proposed rulemaking by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form posted with this notice within Docket No. TTB–2018–0004 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 173 on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the “Help” tab.
- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 173 and include your name and mailing address. Your comments also must be made in English, be legible,

and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB-2018-0004 on the Federal e-rulemaking portal, Regulations.gov, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at https://www.ttb.gov/wine/wine_rulemaking.shtml under Notice No. 173. You may also reach the relevant docket through the

Regulations.gov search page at <http://www.regulations.gov>. For information on how to use Regulations.gov, click on the Web site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice of proposed rulemaking, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB's information specialist at the above address or by telephone at 202-453-2265 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Section 9.48 is amended by revising paragraph (c)(16), redesignating paragraph (c)(17) as paragraph (c)(19), and adding new paragraphs (c)(17) and (c)(18) to read as follows:

§ 9.48 Monticello.

* * * * *

(c) * * *

(16) Then continuing southwest along the county line to its intersection with the Rivanna River;

(17) Then southeast along the Rivanna River to its confluence with the James River, near the Fluvanna–Goochland County line;

(18) Then southwest, then northwest along the James River to its intersection with the Albemarle County line;

* * * * *

Signed: November 30, 2017

John J. Manfreda

Administrator.

Approved: March 30, 2018

Timothy E. Skud

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

[FR Doc. 2018-07090 Filed: 4/5/2018 8:45 am; Publication Date: 4/6/2018]